

CITATION: Lloyd v. Clark, 2008 ONCA 343

DATE: 20080502

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COURT OF APPEAL FOR ONTARIO

FELDMAN, SHARPE and ARMSTRONG JJ.A.

BETWEEN:

SARAH LLOYD and JEFFREY CRAIG PURESSE

Plaintiffs (Appellants)

and

NICOLE CLARK and HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE  
OF ONTARIO represented by THE MINISTER OF TRANSPORTATION, THE  
CORPORATION OF THE TOWN OF AJAX and THE CORPORATION OF THE  
TOWN OF WHITBY

Defendants (Respondents)

William G. Scott for the appellants

Robert M. Zarnett for the respondents

Heard & released orally: April 22, 2008

On appeal from the decision of Justice Guy P. DiTomaso of the Superior Court of Justice  
dated December 15, 2006

ENDORSEMENT

[1] We agree with the appellants that the motion judge erred by refusing their request that the title of proceedings be corrected to name the Regional Municipality of Durham (“Durham”) as a defendant in place of the Town of Ajax and the Corporation of the Town of Whitby pursuant to s. 21(2) of the *Limitations Act, 2002*, S.O. 2002, c. 24.

[2] Section 21 of the *Limitations Act* provides:

**Adding party**

21. (1) If a limitation period in respect of a claim against a person has expired, the claim shall not be pursued by adding the person as a party to any existing proceeding. 2002, c. 24, Sched. B, s. 21(1).

**Misdescription**

(2) Subsection (1) does not prevent correction of a misnaming or misdescription of a party. 2002, c. 24, Sched. B, s. 21(2).

[3] We agree with the submission that on a fair reading of the statement of claim, it was clear that the plaintiff intended to name the Municipality having jurisdiction over and responsibility for the maintenance of the road on which the accident occurred. Moreover, there was clear evidence that Durham immediately knew that it was the intended defendant given the letter sent by Durham's insurance adjustor to the plaintiff's solicitor upon receipt of the statement of claim.

[4] The case law amply supports the proposition that where there is a coincidence between the plaintiff's intention to name a party and the intended party's knowledge that it was the intended defendant, an amendment may be made despite the passage of the limitation period to correct the misdescription or misnomer. See *Ladouceur v. Howarth*, [1973] S.C.J. 120 (S.C.C.); *Kitcher v. Queensway General Hospital*, [1997] O.J. No. 3305 (C.A.) and *J.R. Sheet Metal & Manufacturing Ltd. v. Prairie Rose Wood Products*, [1986] A.J. No. 7 (C.A.).

[5] Accordingly, the appeal is allowed, the order under appeal is set aside and in its place an order shall issue substituting the Municipality of Durham as defendant for the Town of Ajax and the Corporation of the Town Whitby. The appellant does not seek costs.

K. Feldman J.A.”  
“Robert J. Sharpe J.A.”  
“R.P. Armstrong J.A.”